

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5527 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURAT MUNICIPAL EMPLOYEES' STAFF UNION

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR NK MAJMUDAR for Petitioner
MR ND GOHIL for Respondent No. 1
MR GN DESAI for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, Surat Municipal Employees' Staff Union, filed this writ petition before this court and prayed for quashing and setting aside of the action of the Government in suspending the resolution of the Surat Municipal Corporation being Resolution no.280 dated 21st January, 1984. Under the Resolution no.280 dated 21st

January, 1984 on the recommendations of the Standing Committee's resolution no.1415 dated 28-10-1983 as well as on the basis of the recommendation of the Commissioner it was resolved that all the employees of the Surat Municipal Corporation and non-teaching staff of the School Board will be given time scale on the basis of the resolution of the Baroda Municipal Corporation No.222 dated 6th July, 1982 with effect from 1st April, 1984. The petitioner has not filed the copy of the order of the Government under which the Resolution no.280 dt. 21-1-1984 of the Corporation was ordered to be suspended. It is really shocking that the petitioner filed this Special Civil Application without filing the order for which the prayer has been made for quashing of the same in the Special Civil Application. From the reading of the Special Civil Application it comes out that the petitioner was knowing fully well the contents of the order of the Government under which the resolution of the Corporation, No.280 dated 21st January, 1984 was suspended. The explanation as sought to be given for non filing of this order in the Special Civil Application is difficult to believe. In para no.11 of the Special Civil Application, the petitioner has come up with a case that the State Government by its order dated 9-10-1984 has informed the Commissioner that the execution of the Resolution No.280 dated 21st January, 1984 is suspended. The reason for non-production of the said order has been given that the copy of the said letter is refused to be given by the Commissioner to the petitioner though it was demanded. The petitioner has not produced any material on record that at any point of time it has demanded the copy of the order of the Government dated 9th October, 1984 from the Corporation or the Commissioner or from the Government. In the absence of this material, mere word of the petitioner that the copy was not given to it by the Commissioner cannot be accepted. A reference may be made to the affidavit of Ishwarilal M. Naik, President of the petitioner-union in support of this Special Civil Application. The deponent has made solemn affirmation and stated that what is stated in the petition is true to the best of my knowledge, information and belief. The contents of para no.11 has been solemnly affirmed on the basis of the deponent's best of knowledge, information and belief. The verification of the averments made in para no.11 of the Special Civil Application are not very specific and the deponent has taken the use of knowledge, information and belief that is another reason on the basis of which the averments made in para no.11 of the Special Civil Application regarding the demand and non-supply of the copy of the order dated 9th October, 1984 by the Commissioner cannot be accepted.

2. I fail to see any justification in such hot haste approach by the petitioner to this court in the present case. The petitioner should have demanded a copy of the order dated 9th October, 1984 and only after receipt of the copy, it should have filed the Special Civil Application but precisely it has not been done. Not only this, but the prayer has been made for quashing of this order. The order dated 9th October, 1984 though very specifically is not stated, but was the impugned order in this Special Civil Application, if we go by the prayer made by the petitioner in para no.16(b) of the Special Civil Application. Unless the order impugned has been filed by the petitioner, the question of quashing of the said order by this court cannot be ordered. The Apex court in the case of Surinder Singh vs. Central Government reported in AIR 1986 SC 2166 has held that the order impugned in the writ petition should be filed. Though at one point of time, I thought of to dismiss this Special Civil Application only on the ground of nonfiling of the copy of the order dated 9th October, 1984, but the counsel for the Corporation has produced on the record today during the course of arguments, a copy of the said order, and as such, instead of adopting that course, I thought it proper to go on the merits of the matter.

3. The counsel for the petitioner contended that the Resolution of the Corporation No.280 dated 21st January, 1984 could not have been suspended by the State Government for the employees whose minimum and maximum basic pay does not exceed the figure 700-1300. Referring the provisions of sec.51(4) and the Explanation appended to it of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the Act, 1949) the counsel for the petitioner contended that the sanction, for creation or for modification of the pay-scale of the post, the minimum or maximum of the basic pay of which does not exceed the aforesaid figures, is not required to be taken from the Government. After going through the contents of the order dated 9th October, 1984, the counsel for the petitioner contended that this order which has been passed in purporting exercise of the powers conferred by sub-section 1 of sec.451 of the Act, 1949 could not have been passed.

4. On the other hand, the counsel for the Corporation has made a statement before this Court that all the employees whose basic pay does not exceed the figure 2000/- has already been given the benefit of the time scale. In view of this fact, the counsel for the Corporation contended that nothing survives in this

Special Civil Application.

5. The counsel for the State Shri Jani, on the other hand, contended that the order dated 9th October, 1984 has been made by the State Government in exercise of its power under sub-section 1 of sec.451 of the Act, 1949 and the Government has full competence to make the said order. It is for the Government to decide whether the resolution made by the Corporation to give the benefits of the time scale to its employees ignoring altogether the ceiling fixed in this respect by the Government is proper or not and it does not call for any interference of this Court under Article 226 of the Constitution of India. It has next been contended that the counsel for the petitioner has not correctly read the provisions of sec.451 of the Act, 1949. It gives much more wide powers to the Government to put under suspension, execution of any of the resolution of the Corporation which in its opinion will cause injury and annoyance to the public.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The respondent no.1 has given the reasons under its order dated 9th October, 1984 to suspend the execution of the resolution of the Corporation No.280 dated 21st January, 1984. The reasons are that the fixation of the time scale in the promotion scheme will be a huge financial burden on the expenditure of the Corporation to commensurate with the fund and income of the said Corporation. The other reason has been given that the pay scale of the employees of the Corporation was revised with effect from 1st January, 1973 on the basis of the Second Pay Commission appointed by the State Government. Yet another reason has been given that the employees of the Corporation who had completed already 10 years service will be entitled to the benefit of upper pay scale and onwards without any change in the responsibility and acquiring necessary qualification if any for the higher pay scale. The last reason has been given that the resolution of the Corporation sanctioning fixed time promotion is in contravention of or in excess of the powers conferred by sub-sec. 3 of sec.45 and sub-section 4 of section 51 and explanation at the end of sec. 51 of the Act, 1949. The explanation added to sub-section 4 of sec. 51 of the Act, 1949 provides that increase in the salary of any permanent office shall be deemed, for the purpose of sub-section (4) to be the creation of New Office, if by reason of such increase the minimum or, as the case may be the maximum monthly salary, exclusive of allowances exceeds the minimum or, as the case may be the maximum amount fixed by the State

Govt. for the purpose of the sub-section (4) of the Act, 1949. The notification which has been issued by the Government in exercise of its power as conferred by sub-section 4 of sec. 51 on 19th September, 1978 , a copy of which has been produced on the record, the ceiling has been provided that no new permanent office of which the minimum monthly salary exclusive of the allowances exceeds 700 Rupees per month or the maximum monthly salary exclusive of the allowance exceeds 1300 rupees. The counsel for the petitioner contended that the provisions of sec. 51 clause 4 of the Act, 1949 and more so, the explanation to it is not applicable to the class of employees whose minimum monthly salary exclusive of the allowances does not exceed Rs.700/- or the maximum monthly salary exclusive of allowances does not exceed Rs.1300/-, and as such, the direction in this respect be given to the respondent. I do not find any substance in this contention. This court will not issue direction in futility. The respondent Corporation and its Officers are expected of the reading of the provisions of the Act, 1949 in its correct perspective and the suspension of the Resolution no.280 dated 21st January, 1984 may be read subject to the limitation as provided under sub-section 4 of sec.51 of the Act, 1949. To do and act in accordance with the resolution as well as the provisions of the Act, the State Government will not be expected to consider the resolution of the Municipal Corporation to be suspended even for those employees whose cases fall within the statutory limits of the minimum or maximum monthly pay under the resolution dated 19th September, 1978. This contention of the learned counsel for the petitioner cannot be accepted for the other reason that no sufficient and specific material has been produced to illustrate who are the employees whose minimum or the maximum pay does not exceed Rs.700/- and Rs.1300/- as the case may be, and even then too they have been deprived of the benefit of the said resolution. The order dated 9th October, 1984 has to be read subject to the provisions of sub-section 4 of sec. 41 together with the explanation added to it and not dehors of that provision. Sub-section 3 of sec. 45 of the Act, 1949 is yet another provision which justifies the passing of the order dated 9th October, 1984 by the respondent. Such a narrow construction sought to be made to the provisions of sec. 45(3) of the Act, 1949 by the counsel for the petitioner cannot be accepted. The substance and not the form has to be looked into. The reason which has been given that the pay of the employees of the Corporation was revised with effect from 1-1-1973 is germane to the controversy raised in the present case. The huge burden on the expenditure of the Corporation cannot be put, which may

result in causing injury or annoyance to the public. The amount received or given to the Corporation has to be utilised for the welfare and well being of the public residing within the territorial jurisdiction of the Corporation and not only in giving of the higher pay scale to the employees and to the extent of the ceiling prescribed by the Government under sub-section 4 of sec.51 of the Act, 1949. The grounds which have been given in the order dated 9th October, 1984 in support thereof are not irrelevant or extraneous or perverse or arbitrary. Moreover, the counsel for the respondent has made a statement before this Court that it is paying to its employees the time-scale whose basic pay does not exceed Rs.2000/-. The counsel for the respondent-State has made a statement that from year 1981, the Government has introduced a scheme of giving of time-scale on completion of 9 years, 18 years and 27 years of service to its employees , but that benefit is also restricted to employees whose basic pay does not exceed Rs.2000/-. In view of this fact also, I consider that no substantial grievance otherwise also survives in this petition.

7. Taking into consideration, the totality of the facts of this case, I do not find any illegality in the order dated 9th October, 1984 which calls for any interference of this court. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-